EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Ms S Cabrini	**v**	Key Horizons Limited

Heard at: Reading by CVP **On:** 10 November 2022

Before: Employment Judge Hawksworth

Appearances
For the Claimant: In person
For the Respondent: Miss H Platt (counsel)

JUDGMENT ON RECONSIDERATION

The claimant's application for reconsideration of the judgment on the claimant's application for interim relief which was sent to the parties on 19 November 2022 is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

REASONS

Introduction

1. I heard the claimant's application for interim relief at a hearing on 10 November 2022. I refused the application and gave reasons at the hearing. The claimant has requested written reasons, those will be sent separately.

2. On 24 November 2022 the claimant sent an email to the tribunal and the respondent in which she asked for the judgment to be reconsidered. She attached:

   2.1 a document headed appeal application,
   2.2 a document headed application appeal re: application for costs from respondent;
   2.3 an evidence contents list;

2.4 appeal bundle of evidence (a zip file);
2.5 one email called 'gmail FW Sage account manager'

3. I have considered the application under rule 72(1).

The rules on reconsideration

4. Rule 70 of the Employment Tribunal Rules of Procedure 2016 says:

> *"A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."*

5. The requirement that a judgment may only be reconsidered where reconsideration is necessary in the interests of justice reflects the public interest in the finality of litigation.

6. Rule 71 says that an application for reconsideration must be made in writing within 14 days of the date on which the original decision was sent to the parties. Rule 72 explains the process to be followed on an application for reconsideration under rule 71. It says:

> *"(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*
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> *(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*
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> *"(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as*

the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part."

Conclusions on the claimant's application

7. The claimant's application for reconsideration was made within the required 14 days of the date on which the judgment was sent to the parties. The claimant complied with rule 71 in respect of the judgment.

8. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked. I need to decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice. I have considered the claimant's application with this test in mind.

9. The claimant's application document is described as an appeal application, but I have treated it and the accompanying documents as an application for reconsideration.

10. The claimant relies on five points in her application. I have considered these in turn below. The claimant's appeal documents are lengthy; I have considered them in full but in the interests of proportionality I have not responded in detail here to every matter raised by the claimant.

11. Point 1: the claimant says the hearing was biased towards the respondent,

    11.1 The claimant said that it was clear that I know Miss Platt, the respondent's barrister, and she had the feeling there had been some communication between us before the hearing. I do not know Miss Platt in a personal capacity. I had no exchange or communication with Miss Platt before the hearing began. No dates were discussed before the hearing.

    11.2 I did not have any exchange with Miss Platt or anyone on the respondent's side during any break, as the claimant suggests, or at any point during the day when the claimant was not present. Shortly before the first break, I thought I heard another voice from the claimant's room. During the break I asked the clerk to check with the claimant whether she had anyone with her. This was a question raised by me, not by or on behalf of the respondent. It was asked for the purpose of the tribunal's record of the hearing, which notes

everyone who attends and which is kept by the clerk. The claimant confirmed that she was alone.

11.3 There were brief pauses during the hearing to allow Miss Platt to consult with her clients. This is not, as the claimant suggests, procedurally incorrect.

11.4 At the end of the hearing, Miss Platt made a costs application. I said that the application should be made in writing so that the claimant could provide any information on her ability to pay, and I would consider the costs application after that. I did not, as the claimant says, advise Miss Platt to submit a costs application and I did not say that I would 'honour' it.

12. The claimant says that she was disadvantaged by not being able to afford legal representation. I took into account in the conduct of the hearing the fact that the claimant did not have legal representation. In accordance with the overriding objective in rule 2 of the tribunal's rules, I sought to ensure, so far as practicable, that the parties were on an equal footing. For example:

12.1 The claimant sent her bundle for the hearing in 88 separate documents attached to 4 separate emails. Before the hearing I consolidated the documents to make one pdf bundle that could be used at the hearing.

12.2 At the start of the hearing I explained in detail the test for interim relief and the law on protected disclosures and protected disclosure dismissal as set out in sections 43B and 103A of the Employment Rights Act 1996.

12.3 I suggested to the claimant that during a break I was taking for reading, she could read the respondent's skeleton argument, and focus on the table in the respondent's skeleton argument, as this set out what the respondent understood from her claim form to be the alleged protected disclosures. I said I would find it helpful to hear from her what protected disclosures she says she made, and why she said they were protected disclosures, that is what were the relevant failures she disclosed information about, were they in a document or meeting, and on what basis does she say they were disclosures made in the public interest. (In her comments to me at the hearing, the claimant helpfully went through each of the disclosures in this way, and also explained that she relies on another disclosure (disclosure 8) which was not in the table.)

12.4 I told the claimant and Miss Platt that they could have up to one hour each to make their comments to me, but that they did not need to use all of this time. Both took around 30 minutes.

12.5 I explained my case management orders to the parties at the hearing. In the written document, as the claimant is a litigant in person, I included a link to a webpage with information on preparing a schedule of loss, and summary guidance on preparing questions

to witnesses (based on the presidential guidance).

13. Points 2 and 3: the claimant says that available evidence was overlooked, and she would have had more evidence if the respondent had replied to her data subject access request:

    13.1 In making my decision on the claimant's application for interim relief, I had to make an assessment on the evidence which the parties had put before me. I was not able to consider what other evidence might have been available if the respondent had replied to the claimant's subject access request. I explained my reasons for my assessment of the evidence which was before me in the reasons I gave at the hearing.

    13.2 I explained to the claimant at the hearing that the employment tribunal does not have jurisdiction to deal with breaches of the Data Protection Act – it is not a type of claim that employment tribunals have the power to decide.

14. Point 4: the claimant says that missing evidence was not considered, and she lists new evidence she has identified. At the hearing I made a summary assessment of the evidence, considered the parties' comments, applied the relevant legal principles and reached my conclusions. None of the claimant's assertions about the evidence I considered or about new evidence she has found provide a basis for reconsideration of the judgment.

15. Point 5: the claimant says correct procedures were not followed in the hearing. She does not give details of what procedures she is referring to.

    15.1 The claimant also says I made a mistake when referring to the respondent's reliance on 'references etc' as a reason for dismissal. That was a reference to paragraphs 4, 6 and 7 in the dismissal letter, in which the respondent said that the claimant had failed to provide evidence about her educational and professional qualifications, had failed to disclose her surname history and address history, and had provided false information about her employment status and a false CV.

    15.2 I did not, as the claimant suggests, decide the claimant's application before the hearing.

16. In summary, there must be some basis for reconsideration; the reconsideration process is not an opportunity for a party to provide further evidence or to seek to reopen matters which the tribunal has already determined. As I explained to the claimant at the hearing, my refusal of her interim relief application did not mean that I think her claim cannot succeed or that it is likely it will fail. It only meant that on my summary assessment of the evidence at the hearing on 10 November, it did not

appear to me that I could say that the claimant's is a case which has a 'pretty good chance of success'.

17. The fact that the claimant's interim relief application has not succeeded also does not mean that her evidence will not now be considered. The points the claimant raises in her reconsideration application can be considered at the final hearing of her claim. However, the application for reconsideration does not raise any error of law, any procedural error or any other matter which would make reconsideration of the interim relief judgment necessary in the interests of justice.

18. I have concluded in the claimant's case that there is no reasonable prospect of variation or revocation of the original decision, and the application for reconsideration is therefore refused under rule 72(1).

Employment Judge Hawksworth

Date: 12 December 2022

Reasons sent to the parties on

20 December 2022

For the Tribunal office